

releases on the practice followed by DTC and other depositories of paying each other only such fees as are negotiated rather than all fees charged to participants generally. DTC states that the Commission in its releases has never expressed the view that one depository by virtue of executing a participant agreement with another depository in order to establish the legal framework for an interface relationship thereby becomes subject to all of that other depository's published participant fees. DTC states that the Commission has expressed the belief that:

[R]egistered securities depositories are not similar to ordinary participants. Registered securities depositories are subject to special regulation that no other participants face, including a specific statutory charge to cooperate with other registered securities depositories. Thus, the Commission believes that a "no-charge" policy with respect to interface account activity does not result in an inequitable allocation of fees.⁷

DTC believes the proposed rule change is consistent with Section 17A(b)(3)⁸ of the Act. DTC believes that implementation of the subject policy will help assure that depository interface services are available to participants of any depository thereby promoting the goal of one-account settlement. DTC also states that the policy will enable DTC to avoid paying another depository inappropriately high fees that might effect its inefficient operation and to avoid paying another depository higher per-unit fees than such depository charges its participants generally.⁹ DTC believes that managing the fees paid to other depositories, which currently account for approximately 60% of DTC's total cost of providing interface services to its participants, will help reduce the fees that DTC must charge its participants to recover those costs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC believes that by promoting the goal of one-account settlement and by enabling DTC to control the interface costs that are paid by its participants, the proposed rule change would help promote competition among depository users.

⁷ Securities Exchange Act Release No. 20461 (December 7, 1983) at footnote 34.

⁸ 15 U.S.C. 78q-1(b)(3) (1988).

⁹ DTC states that the Commission has indicated that where one depository is entitled to charge another (e.g., for linked services), it expects that any offer of volume discounts to participants generally would also be made available to the other depository. Securities Exchange Act Release No. 23803 (March 31, 1986) at page 21.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not sought or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register, or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR-DTC-94-16 and should be submitted by November 22, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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¹⁰ 17 CFR 200.30-3(a)(12) (1994).

[Release No. 34-36413; File No. SR-DTC-95-09]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change Seeking To Establish a Legal Guidance System

October 25, 1995.

On April 27, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-95-09) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to establish a Legal Guidance System.¹ On July 25, 1995, DTC filed an amendment to the proposed rule change.² On August 22, 1995, DTC filed a second amendment to the proposed rule change.³ Notice of the proposal was published in the Federal Register on September 18, 1995.⁴ No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

DTC will establish an inquiry-only Legal Guidance System ("LGS"), which is a menu-driven, user-friendly system designed to provide DTC participants and nonparticipants (e.g. transfer agents) with information regarding the documents necessary to effect a legal deposit.⁵ LGS will be accessible by DTC participants and nonparticipants through DTC's Participant Terminal System ("PTS"). LGS contains industry requirements, individual state and province requirements, and transfer agent requirements for processing legal deposits. DTC will post a disclaimer in the LGS user guide notifying users that DTC shall not be liable to the user for

¹ 15 U.S.C. 78s(b)(1) (1988).

² DTC amended its proposal to permit organizations that are not DTC participants, such as transfer agents, to subscribe to the Legal Guidance System. Letter from Piku K. Thakkar, Assistant Counsel, DTC, to Mark Steffensen, Esq., Division of Market Regulation ("Division"), Commission (July 21, 1995).

³ As proposed in the original filing, once a user logged onto the Legal Guidance System a disclaimer of liability message was to appear on the terminal screen. DTC amended its proposal to eliminate this message, and instead the disclaimer will appear in a user guide for the Legal Guidance System to be provided to all users. Letter from Piku K. Thakkar, Assistant Counsel, DTC, to Peter Geraghty, Division, Commission (August 17, 1995).

⁴ Securities Exchange Act Release No. 36219 (September 12, 1995), 60 FR 48181.

⁵ A "legal deposit" consists of a registered security and any legal documentation required to effect the legal transfer and registration of the security from the registered holder's name into DTC's nominee name.

any damages resulting from mistakes or omission in LGS.⁶

The LGS menu approach will guide users through a step-by-step process to ascertain the relevant requirements for transferring legal deposits. LGS also will have a "fast forward" navigation option that will allow an experienced user to quickly access the requisite information. Users also will be able to request through LGS that certain transfer documents be sent to their offices by facsimile transmission. In the near future, DTC plans to interface LGS with its Pending Legal Deposit System to track and monitor document expiration. The fee charged to DTC participants and nonparticipants for LGS service will be DTC's standard fee for PTS inquiries.

II. Discussion

Section 17A(b)(3)(F)⁷ of the Act requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of transactions. Furthermore, Section 17(a)(1)(C) of the Act⁸ sets forth a Congressional finding that new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement. As discussed below, the Commission believes that DTC's proposed rule change is consistent with DTC's obligations under the Act.

Implementation of LGS will assist DTC participants and nonparticipants in the preparation of the documentation necessary to effect a legal deposit of securities at DTC by providing guidance as to state, province, and transfer agent requirements as well as forms of the documents required to effect such transfer. This could help to reduce the number of deposits that cannot be immediately processed through DTC due to improper documentation. Because use of LGS could make the legal deposit eligible for DTC processing in a more timely manner, it in turn could serve to improve the efficiency and effectiveness of clearance and settlement of securities transactions.

⁶ Specifically, the disclaimer will state that "DTC does not represent the accuracy, adequacy, or fitness for a particular purpose of the following information, which is provided as is. DTC shall not be liable for: (1) Any loss resulting directly or indirectly from mistakes, omissions, interruptions, delays, errors, or defects arising from or related to this service; and (2) any special, consequential, exemplary, incidental, or punitive damages."

⁷ 15 U.S.C. 78q-1(b)(3)(F) (1988).

⁸ 15 U.S.C. 78q-1(a)(1)(C) (1988).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-95-09) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36421; File No. SR-NYSE-95-35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to a Pilot Program to Display Price Improvement on the Execution Report Sent to the Entering Firm

October 26, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 20, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a pilot program, to be implemented for six months, whereby the Exchange will test and evaluate a means of calculating and displaying, on the execution reports sent to member firms, the dollar amounts realized as savings to their customers as a result of price improvement in the execution of their orders on the Exchange. During the pilot program, the Exchange expects to work with Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill Lynch") in testing and evaluating the proposed methodology. Assuming the results of

the pilot program are successful, the Exchange will make this program available to all its member organizations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed six month pilot program is to develop, test, and evaluate a methodology and program for calculating and displaying, on an execution report sent to member firms entering orders, the dollar value saved by their customers as a result of price improvement of orders executed on the Exchange. This program does not in any way affect the actual execution of orders. The Exchange is proposing to refer to this calculated dollar savings as the "NYSE PRIMESM." For the six months of the pilot, while the program is being tested and evaluated, this feature will be available only for certain orders entered by Merrill Lynch, which is the pilot firm with which the Exchange is working. Should the pilot prove successful, this program will be made available to all other member organizations.

The NYSE PRIME is proposed to be made available for intra-day market orders entered via the Exchange's SuperDOT system that are not tick sensitive and are entered from off the Floor.¹ The NYSE PRIME (amount of price improvement) is calculated in one of two ways: (1) In comparison to the guaranteed (stopped) price for market orders that are stopped; and (2) in comparison to the best bid and offer

SM NYSE PRIME is a service mark of the New York Stock Exchange, Inc.

¹ Also excluded from the NYSE PRIME feature are booth entered or booth routed orders, booked orders, combination orders (e.g., switch orders) and orders diverted to sidacar.

⁹ 17 CFR 200.30-3(a)(12) (1994).